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Paper No. 6

DENNISON, SCHEINER, SCHULTZ & WAKEMAN
Suite 612
1745 Jefferson Davis Highway
Arlington VA 22202

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MAR 11 2002

OFFICE OF PETITIONS

In re Application of :
Kurt Dahlberg :
Application No. 09/973,986 : DECISION REFUSING STATUS
Filed: 11 October, 2001 : UNDER 37 CFR 1.47(b)
Attorney Docket No. 01186CONT :

This is in response to the petition under 37 CFR 1.47(b) filed on 26 December, 2001.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.

Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed on 11 October, 2001, without an executed oath or declaration.

Accordingly, on 26 October, 2001, a "Notice To File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration, the basic filing fee, additional claim fee(s), and a surcharge for their late filing.

In response, on 26 December, 2001, the present petition and authorization to charge the basic filing fee, additional claim fees, the petition fee, and the late-filing surcharge to

counsel's credit card filed, accompanied by a declaration naming Kurt Dahlberg as the sole inventor and signed by petitioner's registered patent attorney, counsel for the putative assignee, Hydropulsor AB on behalf of the non-signing inventor

Petitioner states that the inventor refused orally to sign a declaration for the parent application.

A grantable petition under 37 CFR 1.47(b) requires:

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee;

(4) a statement of the last known address of the non-signing inventor;

(5) proof of proprietary interest, and

(6) proof of irreparable damage.

The petition lacks items (1), (5), and (6). In regards to item (1), petitioner has not provided sufficient proof that a copy of the application (specification including claims, drawings, if any, and the Declaration) was sent or given to the non-signing inventor for review.¹ In this respect, it is noted that the declaration of Lars-Erik Dahl, Vice President of Hydropulsor AB does not indicate whether a copy of the present patent application (specification, including claims, drawings, if any, and the declaration) were ever sent or given to the non-signing inventor.

Petitioner should submit a copy of the cover letter transmitting the application papers to the non-signing inventor or details given in an affidavit or declaration of facts by a person with first-hand knowledge of the details.

Likewise, before a *bona fide* refusal can be alleged, petitioners must show that a copy of the application was sent or given to the non-signing inventor. If there is a written refusal, a copy of that written refusal should be provided with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of facts.

¹MPEP 409.03(d).

In regards to item (5), proof must be shown that Rule 47(b) applicant has sufficient proprietary interest in the subject matter to justify the filing of the application.² A copy of the employment agreement between the non-signing inventor and the Rule 47(b) applicant (company); a copy of an executed assignment agreement showing that the invention disclosed in the application is assigned to the Rule 47(b) applicant, or a legal memorandum signed by an attorney familiar with the law of the jurisdiction stating that a court of competent jurisdiction would, by the weight of authority in that jurisdiction, award the title of the invention to the Rule 47(b) applicant.

In regards to item (6), petitioner must provide proof of irreparable damages in accordance with MPEP 409.03(g).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries related to this decision should be directed to the undersigned at (703)308-6918.



Douglas I. Wood
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

²MPEP 409.03(f).